

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ESTATE OF JULIO EDUARDO HENRIQUEZ,
by Julio Martinez as Administrator,

Plaintiff(s),

**REPORT &
RECOMMENDATION**
CV 04-0492 (DRH)(WDW)

-against-

VILLAGE OF HEMPSTEAD, et al.,
Defendant(s).

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WALL, Magistrate Judge:

By Order dated November 29, 2005, the undersigned granted the motion by plaintiff's attorney to withdraw, instructed the plaintiff to appear either by counsel or pro se at a conference on December 13, 2005, warned the plaintiff that failure to do so would result in an immediate recommendation that the action be dismissed pursuant to Rule 41 for failure to prosecute, and required outgoing counsel to serve a copy of the order on the plaintiff. Familiarity with that order is assumed.

Outgoing counsel, Glen Faber, filed an affidavit of service of the order on Mr. Martinez, reflecting that it was mailed to him at 310 Main Street, Hempstead, NY and that someone whose signature is illegible signed for it on December 1, 2005. The court presumes that Mr. Martinez received the order, which was sent to his home address and accepted by someone there.

Nonetheless, he did not attend the conference on December 13, nor has new counsel made an appearance. Nor has he notified the court of any intention to proceed with this matter or to withdraw his complaint.

Thus, as warned in the earlier order, the undersigned recommends that the action be dismissed with prejudice pursuant to Rule 41 for failure to prosecute. The plaintiff has failed to participate in discovery and to communicate with his lawyers, and has now failed to comply with

an order of the court.

OBJECTIONS

A copy of the Report and Recommendation is being sent by the Court to all parties. It will be mailed to Mr. Martinez at the address used by his counsel for service of the earlier order, noted *supra*. Any objections to this Report and Recommendation must be filed with the Clerk of the Court with a courtesy copy to the undersigned within 10 days of service. Failure to file objections within this period waives the right to appeal the District Court's Order. *See* 28 U.S.C. §636 (b) (1); Fed. R. Civ. P. 72; *Beverly v. Walker*, 118 F.3d 900, 902 (2d Cir. 1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

Dated: Central Islip, New York
December 15, 2005

/s/ William D. Wall
WILLIAM D. WALL
United States Magistrate Judge